

REMARKS/ARGUMENTS

Responsive to the Office Action mailed March 9, 2006:

I. PRIOR ART MATTERS

- A. The Office Action rejected claims 1-4 and 7-9 under 35 USC 103(a) as being unpatentable over Figler in view of Mason. Applicant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.¹ If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.²

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.³

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

The reference does not teach or suggest all the claim limitations.

¹MPEP Sec. 2142.

² Id.

³Id. (emphasis supplied)

As to claim 1, Figler does not teach

an enclosed foot sack having an opening adapted to receive the hunter's legs.

The Office Action argues that "when in an at least partially zipped or closed position the lower portion forms an enclosed foot sack."

While this may be true, Figler does not disclose or teach an enclosed foot sack as a separate element within the sleeping bag as a whole. The Examiner cannot use element 52 as both an enclosed foot sack and as a movable flap attached to the floor and adapted to cover the hunter's body.

Figler also does not teach

a collapsible foot sack support attached to the foot sack opening and adapted to keep the foot sack opening clear of the hunter's legs.

The Office Action uses Mason to provide such a teaching. However, Mason is non-analogous art.

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. (citation omitted) Patent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention, and the courts have recognized the subjective aspects of determining whether an inventor would be reasonably motivated to go to the field in which the examiner found the reference, in order to solve the problem confronting the inventor. We have reminded ourselves and the PTO that it is necessary to consider "the reality of the circumstances (citation omitted) – in other words common sense -- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor."⁴

⁴ In re Hans Oetiker, 977 F.2d, 1443, 1447(Fed. Cir. 1992)(emphasis added)

The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.⁵

Mason is not in the field of Appellant's invention. Furthermore, common sense would dictate that a person of ordinary skill in the art seeking to solve the problem of a collapsible foot sack support for a hunting blind would not reasonably be expected to look for a solution to his problem in the field of bed cover lifting structure (Field of the Invention). The circumstances are totally different, and such a person would not be reasonably motivated to go to the field of Mason to solve the problem. A designer of a hunting blind would be unlikely to be aware of a satisfaction of his problem in such a distant field of art,

Furthermore, the Examiner has not pointed to any suggestion in the prior art to combine Figler and Mason.

Claim 1 is therefore allowable.

Claims 2-4 and 7-9 depend upon claim 1 and are also allowable.

B. The Office Action rejected claims 5, 6 and 10-17 under 35 USC 103(a) as being unpatentable over Figler as modified by Mason further in view of Adams. Applicant respectfully traverses the rejection.

Claims 5, 6, and 10-11 depend upon claim 1 and are also allowable.

Claim 12 is allowable for the reasons given above in regard to claim 1.

Claims 13-17 depend upon claim 12 and are also allowable.

Furthermore, the Examiner has not pointed to a reference that shows the limitation of claim 16, side supports for the floor.

⁵ Id.

As to new claim 18, the Examiner has not produced a reference that shows:

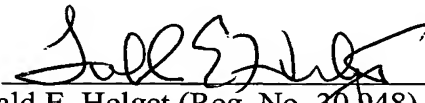
wherein the movable flap further comprises two separate flaps
that meet to cover the hunter's body.

The advantage of this structure is that it allows the hunter to more quickly get up and
deploy his weapon. The claim is not new matter, as it may be located in the original
disclosure at page 4 lines 6 and 7 and in the drawings.

For the above reasons, Applicant respectfully requests the allowance of all claims and
the issuance of a Notice of Allowance.

Respectfully submitted,

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